



PUBLIC NOTICE

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DA No. 04-814
March 26, 2004

**WIRELESS TELECOMMUNICATIONS BUREAU
MOBILITY DIVISION
APPROVES WITHDRAWAL OF APPLICATION FOR REVIEW
AND JANUARY 15, 2004 LETTER**

This Public Notice approves a March 23, 2004 Request to Withdraw, with prejudice, (1) an Application for Review, and (2) a letter filed by NY Telecom, LLC (NYT) and Eldorado Communications, LLC (Eldorado) (Withdrawal Request).

On April 2, 2003, NYT filed an Application for Review of the Wireless Telecommunications Bureau's Order tolling the construction deadlines for 90 C and F block Personal Communications Service (PCS) licenses held by NextWave Personal Communications and NextWave Power Partners, Inc. (collectively, NextWave).¹

On January 15, 2004, NYT and Eldorado filed a letter concerning *ex parte* procedural issues relating to an application for FCC consent to the assignment of 34 PCS licenses from NextWave to Cingular Wireless LLC.²

¹ In The Matter Of NextWave Personal Communications, Inc., And NextWave Power Partners, Inc., Petition for Declaration of Compliance With, and Clarification of, Broadband PCS Construction Deadline; or in the Alternative, for Waiver and Extension of First Construction Deadline, File Nos. 0000855872, *et al.*, Order, 18 FCC Rcd 3235 (WTB 2003).

² Letter from Henry Goldberg, counsel to Eldorado and NYT, to John A. Rogovin, General Counsel, Federal Communications Commission (Jan. 15, 2004) (filed in WT Docket 03-217). The Commission approved the assignment on February 11, 2004. In The Matter Of Applications For Consent To The Assignment Of Licenses Pursuant To Section 310(d) Of The Communications Act From NextWave Personal Communications, Inc., Debtor-In-Possession, And NextWave Power Partners, Inc., Debtor-In Possession, To Subsidiaries Of Cingular Wireless LLC, *Memorandum Opinion & Order*, WT Docket 03-217, File No. 0001461949, *et. al.*, FCC 04-26, 2004 WL 299088 (F.C.C.) (rel. Feb. 12, 2004) (*Assignment Order*). On February 23, 2004, NYT and Eldorado filed a Notice of Appeal and a Petition for Review of the Commission's *Assignment Order* with the United States Court of Appeals for the District of Columbia Circuit, Case Nos. 04-1067 and 04-1068, respectively. On March 23, 2004, NYT and Eldorado filed a motion to dismiss the Court of Appeals cases. Upon the approval of that dismissal request, WT Docket 03-217 shall terminate. See "Wireless Telecommunications Bureau Mobility Division Approves Withdrawal Of Petition To Deny And Related Settlement Agreement," Public Notice, DA 04-752 (rel. Mar. 22, 2004).

The Mobility Division hereby approves the withdrawal of, and dismisses with prejudice, the letter filed by NY Telecom, LLC and Eldorado Communications, LLC on January 15, 2004.

The Mobility Division has also reviewed the Withdrawal Request and finds that it raises no substantial or material questions of fact under Section 309(d) of the Communications Act of 1934, as amended.³ Accordingly, pursuant to section 0.331 of the Commission's rules,⁴ and based on the statements contained in the Withdrawal Request, the Mobility Division hereby approves the withdrawal of, and dismisses with prejudice, the Application for Review filed by NY Telecom, LLC on April 2, 2003; all other pleadings filed in that matter are hereby deemed moot and the proceeding terminated.

Action by the Deputy Chief, Mobility Division.

FOR FURTHER INFORMATION CONTACT: Richard Arsenault, Chief Counsel, Mobility Division, at (202) 418-0920 or Richard.Arsenault@fcc.gov.

³ 47 U.S.C. § 309(d).

⁴ 47 C.F.R. § 0.331.